

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

HOWARD S. HOMER)	
Claimant)	
VS.)	
)	Docket No. 144,563
MULLER CONSTRUCTION COMPANY)	
Respondent)	
AND)	
)	
AETNA CASUALTY & SURETY COMPANY)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

HOWARD S. HOMER)	
Claimant)	
VS.)	
)	Docket No. 144,564
LOGAN & COMPANY)	
Respondent)	
AND)	
)	
UNITED FIRE & CASUALTY COMPANY)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

This matter comes before the Workers Compensation Appeals Board upon remand from the Kansas Court of Appeals in its unpublished memorandum opinion in Docket No. 77,533 filed April 24, 1998.

ISSUES

In its decision of August 23, 1996, the Appeals Board found that Logan & Company and its insurance carrier, United Fire & Casualty Company, were entitled to reimbursement under K.S.A. 1989 Supp. 44-556(e) for all benefits paid as a result of the injuries suffered by claimant on December 22, 1988, and April 10, 1990. Said reimbursement was due from Muller Construction Company and its insurance carrier, Aetna Casualty & Surety Company. The Kansas Court of Appeals found K.S.A. 1989 Supp. 44-534a(b) to be more applicable and reversed the decision by the Appeals Board and remanded this matter "for appropriate certification to the commissioner of insurance."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

K.S.A. 1989 Supp. 44-534a(b) states:

If compensation in the form of medical benefits, temporary total disability benefits or vocational rehabilitation benefits has been paid by the employer or the employer's insurance carrier either voluntarily or pursuant to a preliminary award entered under this section and, upon a full hearing on the claim, the amount of compensation to which the employee is entitled is found to be less than the amount of compensation paid or is totally disallowed, the employer and the employer's insurance carrier shall be reimbursed from the workers compensation fund established in K.S.A. 44-566a and amendments thereto, for all amounts of compensation so paid which are in excess of the amount of compensation the employee is entitled to as determined in the full hearing on the claim. The director shall determine the amount of compensation paid by the employer or insurance carrier which is to be reimbursed under this subsection, and the director shall certify to the commissioner of insurance the amount so determined. Upon receipt of such certification, the commissioner of insurance shall cause payment to be made to the employer or the employer's insurance carrier in accordance therewith.

The Kansas Court of Appeals, in applying the language of K.S.A. 1989 Supp. 44-534a(b), found that the appropriate reimbursement should be from the Kansas Workers Compensation Fund.

The Appeals Board, in following the mandate of the Court of Appeals, remands this matter to the Director of Workers Compensation for a determination of the amount of compensation paid by the employer that is to be reimbursed from the Fund and for certification to the commissioner of insurance for payment in accordance herewith.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this matter be remanded to the Director of Workers Compensation in accordance with the above findings.

IT IS SO ORDERED.

Dated this ____ day of June 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: David L. McLane, Pittsburg, KS
Kendall R. Cunningham, Wichita, KS
James B. Biggs, Topeka, KS
William L. Phalen, Pittsburg, KS
Brad E. Avery, Assistant Director
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director